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DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

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Mr. Chairman and Members of the Committee, I welcome the opportunity to appear before you today to work toward a solution to the long-standing problems associated with the payment of contract support to Indian Tribes.

House Resources Committee Hearing

Several weeks ago, I testified before the House Resources Committee on this same subject- During the hearing, Chairman Young indicated that the Committee did not want to amend the Indian Self-Determination and Education Assistance Act (Pub.L. 93-638), and the written material from the Committee also indicated that any proposed changes in contract support that lacked endorsement from the National Congress of American Indians would be "dead on arrival." While I respect Chairman Young's concern that opening the Self-Determination Act ('638) to further amendments may provide an additional opportunity to impose limits on Indian gaming, I believe the Act must be amended if we are to reach resolution on contract support.

Conflict between Appropriations and Authorizing Committees

Almost from the beginning of '638, there have been significantly different points of view between the Appropriations Committees and the Authorizing Committees on payment of contract support costs, with the Department and Indian Tribes caught in the middle. In the last two years, this conflict has taken on the utmost importance since the Appropriations Committees decided that one way to hold down contract support costs was to impose a moratorium on additional Self-Determination awards. This action, Mr. Chairman, represents a tremendous set-back for Federal Indian policy and we must find a way to resolve this impasse.

Consultation on Contract Support Proposals

After reviewing the reports prepared by the General Accounting Office, the National Congress of American Indians and a BIA/Tribal Work Group, I put together a series of draft proposals that were

subject to tribal consultation. We received responses from 61 Tribes or their lawyers. Thirty-four Tribes used an optional form we had provided to record their views on the six key elements of the draft proposal. Work on the proposal is ongoing, with another opportunity for tribal consultation at the NCAI conference in October. Not surprisingly, there is no clear consensus among the Tribes that responded to the initial request for views on the draft proposal.

Indian Self-Determination Act

Mr. Chairman, adverse decisions have been entered against the Federal Government in a number of law suits brought by Tribes over contract support payments (although these decisions are not yet final). In my opinion, one of the main reasons that we are having this difficulty is that the statute could provide clearer guidance. While the law states that the provision of funds for Self-Determination awards and contract support costs are 'subject to the availability of appropriations,' the law also states that nothing "shall be construed to authorize the Secretary to fund less than the full amount of need for indirect costs associated with a self-determination contract." Contracting Tribes argue that contract support costs should be considered mandatory. The Administration and the Appropriations Committees view them as discretionary, The U.S. Government's position in court cases when Tribes argue that the "full amount of need" language governs is that this authorization law is indeed "subject to the availability of appropriations,' that these discretionary appropriations have not been provided by Congress, and there is no authority to pay any other claims. Congressional assistance in clarifying the Act would help resolve the problems faced by the Appropriations Committees in trying to find the right balance between providing funding for direct Indian program services and providing funding for tribal indirect expenses.

Other Federal Awards

Once this question is resolved, there remains one other issue that requires a legislative solution and that is the treatment of indirect costs associated with awards made by other Federal agencies. Many Federal programs limit indirect cost recovery by grantees. In the *Ramah* case, the plaintiffs seek to have BIA and IHS adjust the indirect cost rates upward so that we essentially cover the indirect costs that other agencies are not paying. While we do not believe that to be the intent of '638, we also recognize that most tribal governments depend on Federal support for a majority of their program services and lack outside revenue to cover administrative costs that cannot be charged to the Federal award- The costs of other Federal agency awards should not be shifted to BIA and HHS at the expense of those activities like education, law enforcement, and trust asset management. I will work with Congress and within the Administration to develop legislative amendments regarding the cost effective treatment of indirect costs associated with grant awards.

Conclusion

Mr. Chairman, I realize that time is short in this session of Congress. I remain hopeful, however, that we can fashion a solution acceptable to the Appropriators, the Authorizing Committees, and the Administration.